S.B.Criminal Revision Petition No.1221/2007

Ramesh
v.
State of Rajasthan

Date of Order :: 22nd November, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Bharat Shrimali, for the petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.

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This revision petition is preferred to challenge the judgment dated 25.10.2007 passed by learned Sessions Judge, Dungarpur in Cr.Appeal No.88/06 affirming the judgment and order dated 29.11.2006 passed by learned Judicial Magistrate, Dungarpur convicting the petitioner for the offences punishable under Sections 9 and 10 of the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995 (hereinafter referred to as "the Act of 1995") and awarding a sentence to undergo rigorous imprisonment for a term of one year with fine of Rs.1500/- relating to offence under Section 10 of the Act of 1995 and to undergo six months rigorous imprisonment with a fine of Rs.500/- for the offence under Section 9 of the said Act.

The contention of counsel for the petitioner is that both the courts below failed to appreciate that there is no evidence available on record to show that the cow died because of any act of the

petitioner. According to counsel for the petitioner the available evidence at the most proves that the cow entered in the fields of the petitioner and the petitioner threw stone just to get the cow out from the fields. Beside above, learned counsel has also asserted that there was no just and valid reason for denying the benefit of Section 4 of the Probation of Offenders Act, 1958.

PW-2 Laxman in quite unambiguous terms stated that the accused was throwing stones by gofan (leather belt) upon the cow. PW-6 Dr. Gajendra Patel who examined body of cow also found that beside fracture in tibia bone the cow was having number of serious injuries. Thus, no error is there in holding the petitioner guilty for the offence alleged. However, I do not find any just reason to deny benefit of the provisions of Probation of Offenders Act.

Learned appellate court denied extension of benefit of Probation of Offenders Act, 1958 to the petitioner only on the count that the cow is a holy animal, thus, no benefit of Probation of Offenders Act, 1958 is required to be given. Even according to the prosecution case the petitioner was trying to remove cow from his fields by throwing stone and that caused death of cow. It is true that the cow is a holy animal but while extending the benefit of Probation of Offenders Act it is also required to be looked into as

to whether the accused is a professional offender or there are chances of getting reform by extending benefit of Section 4 of the Act of 1958. In the instant matter the accused is a poor farmer belonging to a tribe and he is not involved in any other offence, as such he deserves to get benefit of Probation of Offenders Act.

In view of it, this petition is disposed of while maintaining the conviction with modification of the sentence by extending benefit of Section 4 of the Probation of Offenders Act, 1958 to the petitioner. The petitioner be released on probation subject to the condition that he furnishes two sureties in a tune of Rs.1000/- to the satisfaction of the trial court.

(GOVIND MATHUR),J.

Kkm/ps.